

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET

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ROUTE SLIP

TO		Take necessary action	<input type="checkbox"/>
		Approval or signature	<input type="checkbox"/>
		Comment	<input type="checkbox"/>
		Prepare reply	<input type="checkbox"/>
		Discuss with me	<input type="checkbox"/>
		For your information	<input type="checkbox"/>
		See remarks below	<input type="checkbox"/>
FROM	TRACEY LAWLER	DATE	7/6/83

STAT

REMARKS

I don't know why CIA was never asked to comment on these three reports (DOD, State, Justice).

In any case, please consider this as your formal request for views. May I please hear from you as soon as possible.

Thanks.

Waiver applies. No Referral to OSD

Not referred to OMB. Waiver applies.

SPECIAL

Advised OMB
W/OB on all
three reports
per GMC instructions

284
OMB FORM 4
Rev Jul 83
7 July 1983



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

General Counsel
83-09683

June 16, 1983

SPECIAL

LEGISLATIVE REFERRAL MEMORANDUM

TO:

Legislative Liaison Officer-

National Security Council

Department of State

Department of Energy

Department of Commerce

Department of Justice

-oppose, see NCLH.

-oppose p. Sandy Schneider

6/30

SUBJECT:

Defense draft report on H.R. 40, a bill "To amend the Arms Export Control Act to authorize the President to prescribe regulations for protecting arms information from the risk of indiscriminate export."

The Office of Management and Budget requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

A response to this request for your views is needed no later than
WEDNESDAY, JUNE 30, 1983.

Questions should be referred to Tracey Lawler (395-4710)
the legislative analyst in this office.

Ronald K. Peterson

RONALD K. PETERSON FOR
Assistant Director for
Legislative Reference

Enclosures

cc: Bob Howard
Kevin Quigley

SPECIAL



DEPARTMENT OF DEFENSE
OFFICE OF GENERAL COUNSEL
WASHINGTON, D.C. 20301

M4-11 81.8

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June 14, 1983

Honorable David A. Stockman
Director, Office of Management
and Budget
Washington, D.C. 20503

Dear Mr. Stockman:

The views of the Department of Defense have been requested on H.R. 40, 98th Congress, a bill "To amend the Arms Export Control Act (formerly Foreign Military Sales Act) to authorize the President to prescribe regulations for protecting arms information for the risk of indiscriminate export."

Advice is requested as to whether there is objection to the presentation of the attached report to the Committee.

Sincerely,

Werner Windus

Werner Windus
Director
Legislative Reference Service

Enclosure



GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE

WASHINGTON, D.C. 20301

Honorable Clement J. Zablocki
Chairman, Committee on Foreign Affairs
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Reference is made to your request for the views of the Department of Defense on H.R. 40, 98th Congress, a bill "To amend the Arms Export Control Act (formerly Foreign Military Sales Act) to authorize the President to prescribe regulations for protecting arms information from the risk of indiscriminate export."

More specifically, this bill would authorize the Secretary of Defense, in consultation with the Secretaries of State and Energy, to prescribe regulations which specify information pertaining to items listed in the United States Munitions List that is required in the interests of the United States to be protected from disclosure in order to preclude the possibility of unauthorized export. The bill provides further that such regulations shall be published for public notice in the Federal Register. And, notwithstanding any other provision of law, information specified in such regulations, or materials revealing such information, shall not be published or disclosed unless the Secretary of Defense, in consultation with the Secretaries of State and Energy, determines that withholding thereof is contrary to the national interest. S ?

Authority such as that contemplated in H.R. 40 is needed to permit the Department of Defense to control the dissemination of unclassified but sensitive military technical data outside the United States Government. At present, such information is available to requesters under the Freedom of Information Act, and through a myriad of other public distribution channels. The United States Intelligence Community has confirmed that the ready availability of such data is having a serious and profound impact upon United States national security interests. Adversaries of the United States are putting this information to profitable use, developing and producing comparable military systems in a shorter time and at far less cost than would otherwise be required. Similarly, their knowledge of United States military technology enables them to develop countermeasures to United States systems far more effectively and efficiently than would otherwise be the case.

All of this, in turn, forces the United States to develop and produce new systems of its own to match or counter the systems of its adversaries, adding greatly to rising military expenditures.

The Department of Defense strongly supports legislation that would provide it with greater authority to control the dissemination of unclassified technical data that would otherwise be subject to export control laws; however, we believe there are alternatives to H.R. 40 that would better accomplish this purpose. As drafted, H.R. 40 has several shortcomings:

- ° It applies only to information pertaining to items on the United States Munitions List. It should also pertain, in our view, to items on the Commodity Control List, developed under the Export Administration Act of 1979, which have military significance.

- ° The scheme established for disclosing such information once specified by the Secretary of Defense is awkward and cumbersome. It would require each such item of information, prior to release, to be coordinated with the Secretaries of State and Energy. The procedures for release of such information, in our view, should be left to the regulations prescribed by the Secretary of Defense, which require consultation with State and Energy. In addition, the proposed grounds for release by the Secretary, that is, that "withholding is contrary to the national interest" seem incongruous since these presumably are the grounds for withholding the data in the first place.

- ° It would be preferable for this bill to explicitly state that information designated pursuant to the regulations prescribed by the Secretary may be withheld under the Freedom of Information Act (section 552 (b)(3), title 5, United States Code).

Attached is a copy of a proposal originated by the Department of Defense to accomplish a purpose similar to H.R. 40. This proposal has been forwarded to the Office of Management and Budget for coordination within the Executive Branch, but has not as yet been endorsed by the Administration. It is provided for your information.

The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the presentation of this report for the consideration of the Congress.

Sincerely,

Enclosure

A BILL

To amend chapter 4 of title 10, United States Code, to authorize the Secretary of Defense to regulate the dissemination of certain information in the interest of the national defense.

1 Be it enacted by the Senate and House of Representatives
2 of the United States of America in Congress assembled, That

3 (a) chapter 4 of title 10, United States Code, relating
4 to organization and functions of the Department of Defense,
5 is amended by adding at the end of such chapter the following
6 new section:

7 "Sec. 141. Secretary of Defense: authority to regulate
8 dissemination of certain information.

9 "(a) The Secretary of Defense may prescribe regulations,
10 notice and opportunity for public comment thereon, to
11 regulate the dissemination of information originated by or on
12 behalf of the Department of Defense, whose disclosure outside
13 the government could reasonably be expected to result in
14 the loss of a significant military technological or operational
15 advantage by the United States, and which constitutes:

16 "(1) scientific and technical information which
17 is directly and significantly related to military or
18 industrial products or processes."

19 "(2) defense information required solely for operational
20 purposes;

21 "(3) indexes to the types of information referenced
22 to in sections 1 and 2, above.

1 "(b) This section fulfills the requirements of clauses
2 (A) and (B) of section 552(b)(3) of title 5, and specifically
3 exempts from disclosure any information that is the object of
4 a determination made pursuant to regulations promulgated under
5 the authority of subsection (a).

6 "(c) Nothing in this section may be construed to
7 authorize the Secretary of Defense to withhold any information
8 from Congress."

9 (b) The table of sections at the beginning of chapter 4
10 of such title is amended by adding at the end thereof the following
11 new item:

12 "Sec. 141. Secretary of Defense: authority to regulate
13 dissemination of certain information.